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703405—46

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 221

CLARENCE GOIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority opinion in the circuit court of appeals (R. 39–41, 54) has not yet been reported.[1]

JURISDICTION

The judgment of the circuit court of appeals was entered May 9, 1946 (R. 42), and a petition for rehearing was denied May 24, 1946 (R. 54).[2]

[1] In its opinion the court below disposed of the appeals in three cases. The dissenting opinion (R. 41) concerns only the appellant Rushell Bailey who was not indicted or tried with petitioner, and who is not a petitioner in this case.

[2] The court's order of May 24, 1946, as reproduced at R. 54, does not indicate that the petition for rehearing was denied when the opinion affirming petitioner's conviction was modi-

The petition for a writ of certiorari was filed June 20, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure, effective March 21, 1946.

QUESTION PRESENTED

Whether petitioner's conviction should be reversed on the grounds that there was insufficient evidence to support the verdict of guilty.

STATEMENT

Petitioner was charged in a one-count indictment returned in the United States District Court for the Southern District of Indiana with buying and receiving twelve cases of whiskey that had been stolen from an interstate shipment, knowing that they had been stolen (18 U. S. C. 409).[3] After a jury trial, at which he was represented by counsel (R. 4–18), he was found guilty as charged and was sentenced to imprisonment for four years (R. 20). On appeal to the Circuit Court of Appeals for the Seventh Circuit his conviction was affirmed (R. 42).

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fied. But the petition for rehearing was filed on behalf of Goin, as well as appellants Powell and Bailey (R. 43); and the court's order of May 24, 1946, as reproduced at R. 70 in Nos. 219–220, this Term, filed by Powell and Bailey, indicates that the last sentence of the order reads as follows:

"It is further ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied."

[3] This statute is quoted in the Government's brief in Nos. 219–220, this Term, at p. 2.

The evidence for the Government is set forth in the Argument, *infra.*

ARGUMENT

Relying principally upon *United States* v. *Atkinson,* 297 U. S. 157,[4] petitioner, who failed to challenge the sufficiency of the evidence at any stage of the proceedings in the trial court, contends here, as he did in the circuit court of appeals, that his conviction should be reversed because "there was such a lack of evidence as to make" his conviction "a miscarriage of justice" (Pet. 6–7, 11, 14–17). This contention is without merit.

There was ample uncontradicted evidence to sustain the jury's verdict;[5] it may be summarized as follows:

At about daybreak on the morning of July 25, 1945, twelve cases of fifths of Golden Wedding whiskey—part of a shipment of 430 cases en route from Lawrenceburg, Indiana, to Memphis, Tennessee—were stolen from a freight depot in Evansville, Indiana, by Arlan L. Rhodes, Talbert Beasley and George L. Stearsman. Rhodes and Stearsman took the whiskey in a 1937 Plymouth

[4] "In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings." *United States* v. *Atkinson,* 297 U. S. 157, 160.

[5] Petitioner did not testify, and offered no evidence in his defense.

sedan almost directly[6] to the home of petitioner, who Stearsman had heard was a bootlegger. Petitioner had his living quarters in the front room on the second floor of the house; he had a bar, and tables, in the middle room where he sold drinks; and in the back room he had a table set up for shooting craps. Stearsman told petitioner he had in his car, which was parked outside, twelve cases of whiskey which he had bought in Peoria for $35 a case and wanted to make a small profit on it. Petitioner asked if it was "hot" and Stearsman replied that it was not. Petitioner then agreed to pay $40 per case for it, and said: "I will have to take your car and unload it." Thereupon Stearsman and Rhodes waited at petitioner's house, having a few drinks in the middle room while petitioner drove off with the car and the whiskey. Fifteen minutes later petitioner returned the car, empty, turned over the keys to Stearsman, and then paid $450 for the whiskey. (R. 8–11.) Three or four weeks later petitioner purchased from Stearsman, for $60, twenty-one cases of whiskey, wines, etc., which Stearsman had stolen from a liquor store (R. 10). After petitioner was arrested, two empty bottles bearing Golden Wedding whiskey labels similar to those in the shipment from which the twelve cases were stolen were found in an ash pit behind petitioner's

[6] They tried first to sell it to Lindsay Powell (petitioner in this Court for a writ of certiorari in No. 219, O. T. 1946) but Powell said he could not use it; he had too much (R. 8, 9).

premises (R. 5, 11). There was also testimony that at the time petitioner agreed to pay $40 per case for the whiskey the wholesale price for it in Indiana, including the State tax and exclusive of transportation charges, was $28.52 (R. 6); and that petitioner had no State permit for the purchase of whiskey and, therefore, was only entitled to purchase whiskey for his own use which limited him to one gallon at a time [7] (R. 12–13).

Although there was no direct showing that petitioner knew the whiskey had been stolen, the circumstances under which he acquired it clearly warranted the jury's finding that he did know Stearsman and Rhodes were disposing of stolen goods.[8] He made the unauthorized purchase in the

[7] One case of 12 fifths contains 2.4 gallons (R. 13).

[8] The jury's attention was called to the fact that this was the only element of the crime as to which there was no direct evidence. The court charged as follows (R. 16–18):

"It isn't necessary that the defendant know that the merchandise was moving in interstate commerce at the time it was stolen. That is not necessary, where one receives stolen property. But the only thing that he is required to know is that it was stolen property.

"Now, that is the question, and seems to be the only question in this case. The evidence is uncontradicted that this merchandise was moving in interstate commerce at the time it was stolen. The ones who did the stealing told you that they stole the property, or the merchandise, from this warehouse while it was in interstate commerce. Therefore, the only question for you to determine, and if you believe the uncontradicted evidence in this case, there is no question but what this defendant did buy and receive that particular merchandise, it is down to one question for you to determine, whether or not at the time he bought it, he knew that the

early hours of the morning, for cash, for a price which was in excess of the market price for a bona fide transaction, without examining the whiskey or inquiring as to whether it bore tax stamps; and he

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property was stolen. That is the only question, it seems, that is controverted in this case.

"Now, there is no oral testimony, direct testimony, that he knew it, but you must understand that circumstantial evidence is legal evidence. Sometimes it is more convincing than oral testimony. So in determining that question, the intent on his part, that is, that he knew this property was stolen, consider the circumstances, the manner in which the sale was made, the conduct of the parties, paid for in cash, and all of those things in determining the one question, whether or not he knew this property was stolen. The fact that he asked whether or not it was hot. That is the question for you to determine.

"There is some evidence here that he had another deal, another transaction, with one of these same persons following this transaction. He is not on trial for that transaction; that was only competent to determine and to help you to determine his intent in buying this property, whether or not he did know that it was stolen property. Now, we are not trying at this time these persons who stole the property, and the fact they have plead guilty in this case, to having stolen this property in interstate shipment, come here and testified, that particular fact must not be considered by you in determining this question of whether or not the defendant did buy this property knowing that the same was stolen. He is not on trial for violating the state law, in buying merchandise without a permit. That is not in this case excepting as it might go to assist you in determining the type of person with whom you are dealing. That is the only place that that evidence has in this particular case.

* * * * *

"If the Government depends entirely on circumstantial evidence; to prove the guilty knowledge of the defendant, such evidence must point so conclusively to the guilt of the defendant that you can arrive at no other conclusion."

unloaded it himself, apparently being unwilling to reveal to the others where he stored the supplies for the illicit business he was carrying on in the second floor bar at his home.

It is manifest, we believe, that the evidence fully supports the verdict,[9] and that a review of the evidence by the court below would not have changed that court's conclusion affirming petitioner's conviction. The assertion (Pet. 11) that "the entire record in this cause reveals such a lack of evidence as to make the conviction of the petitioner a miscarriage of justice" is clearly without merit.

CONCLUSION

For the reasons stated we respectfully submit that the petition for a writ of certiorari should be denied.

J. HOWARD MCGRATH,
Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
ANDREW F. OEHMANN,
Attorneys.

JULY 1946

[9] The question is not, as petitioner argues (Pet. 11), whether the Government showed "that Goin, beyond all reasonable doubt, knew the property to have been stolen," but whether there was substantial evidence to support the verdict, it being for the jury to determine whether "the effect of the evidence was such as to overcome any reasonable doubt of guilt." *Pierce* v. *United States*, 252 U. S. 239, 251–252.

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